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Public Law
and
Social Human Rights

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Introduction

David A. Frenkel

This book offers a collection of essays that seek to shed light on legislative activity and on several issues of social human rights.

Social human rights are both social rights and human rights, and include right to education, cultural rights, right not to be discriminated, social justice and questions of the morals of criminal prohibitions. These rights should be recognised and protected.

The essays in this book are based on presentations at the International Conference on Law, organised by the Athens Institute for Education and Research (ATINER) held in Athens, Greece.

The book is divided into two parts: 1) Legislative Activity and 2) Social Human Rights. The second part is divided into: Right of Education, citizenship, Family Preservation and Stability, Protection of Traditional Knowledge, Human Rights and Popular Culture, Freedom of Speech and Social Rebellion, and Criminal Offences.

Legislative Activity

The book commences with Dennis Dixon's essay on *The Rule of Law and Parliamentary Sovereignty in Britain*. In his essay, Dixon states that the rule of law is never absolute. Legislatures cannot rule through particular 'laws' alone and have to use general commands. These commands must generally satisfy the principality of legality or fail. Creating a judicial power to overrule Parliament is a matter of choice of constitution. That choice is for the people, and not to be derived from legal theory.

In the second essay, *Significant Legislation and Legislative Effectiveness: A Preliminary Framework*, Osnat Akirav deals with the content of legislation. She offers a preliminary framework for defining and measuring significant legislation and legislative effectiveness.

Malgorzata (Margaret) Carran demonstrates in the third essay *Regulation of Adolescents gambling – Too Narrow Approach?* points out that despite of legislations in most jurisdictions imposing criminal sanctions, prevalence rates indicate that large number of minors does in fact participate in gambling activities including those that are unlawful for their age. Carran challenges the effectiveness of criminal sanctions for regulatory gambling offences due to its inherent nature and the existence of easy to satisfy defences. She also argues that regulating gambling *stricto-senso* only while leaving unregulated activities that may constitute entry points toward gambling and otherwise stimulating

demand cannot be truly effective in protecting minors from gambling related harms.

Social Human Rights

Right to Education

In his essay, *Freedom from Ignorance: the International Duty to Provide Public Education*, Areto A. Imoukhuede argues that public education is an international human right. He discusses how current US education rights doctrine is inconsistent with US tradition and legal precedent and calls the US to follow international law regarding the right to public education.

Citizenship

Citizenship as a primary legal aspect of self identity is the subject dealt by Iryna Sofinska in her essay *Citizenship as a Primary Legal Aspect of Self Identity (or just Self Labelling?)*. She analyses the many discussions on this issue which aimed to determine possible strong ideological baggage, package of rights and full membership in a state (feature of citizenship) from everyday and personal complexity of social interaction (feature of self identity).

Family Preservation and Stability

The next essay is of Lynne Marie Kohm. Her essay *The Challenges of Family Law and Policy in Immigration Regulation* considers challenges to policies, particularly regarding marriage definitions, migration and the challenge of family preservation and restoration. Her research examines global concerns in light of diminishing fertility rates and multiculturalism. She calls for a comprehensive approach to family law and family policy. Kohm offers policy principles for developing national immigration regulations for the formulation of strong policy promoting national stability in the face of global mobilisation of families.

Protection of Traditional Knowledge

The increasing threat of the continued existence of traditional healers and traditional primary healthcare is the subject of Elmien W.J. du Plessis in her essay *Protection of Traditional Knowledge in South Africa: Does the 'commons' provide a solution?* There are areas where traditional knowledge about the different types of local medicinal plants and uses are developed by the traditional healers, and many of these plants own their sustainable use and survival to the traditional healers. However, access to these plants became increasingly threatened by people out of the community (e.g. hunters and pharmaceutical companies) who over harvested the plants. The continued existence of traditional healers and knowledge is threatened. The South African Government failed to protect it through intellectual property laws, as traditional intellectual property law does not pay adequate regard to the communities' ability to regulate the use of traditional knowledge through customary law and

practice. Du Plessis suggests that the discourse of the 'commons' might provide a solution. Her preliminary hypothesis is that the commons can be employed as an institution where communities can freely manage access and use of the traditional knowledge without having to rely on a model of *exclusion*.

Human Rights and Popular Culture

In her paper *Addressing Disappearances: Representations of Rape in Balkan Cinema*, Anna Chronopoulou seeks to explore the specifics of violence as found and expressed through the Balkan cinema tradition, focusing on representation of rape. The essay brings forward the claim that rape as a particular theme is treated by film makers not so much within the discourse on gender but rather within the disclosure on violence. The essay compares the approach taken in the Balkan cinematic tradition to the Western approach on cinematic representations of rape. Although the essay offers a discussion of feminist accounts it should not be treated as such. It offers an attempt to identify the paradoxical reversals that take place in the positioning of perpetrators and victims.

Freedom of Expression and Social Rebellion

Michael P. O'Connor sees in the 'Arab Spring' revolutions, austerity protests in Europe and the 'Occupy Wall Street' movement aspects which are peculiar to the 21st century social rebellion. In his essay *Arab Spring to American Winter: The Need to embrace "structured Spontaneous Disorder" in 21st Century Social Rebellion*, O'Connor examines the changing face of social rebellion. The protections afforded to social protest in democracies, and the restrictions curtailing protests. He examines new technological challenges to suppression of dissent before concluding that for democracy to thrive in an increasingly pluralistic and connected world. Social order must cede some ground to free expression.

Criminal Offences

The first paper in this section, *Inchoate Offences in Cyberspace – a Moveable Feast or the End of Harm*, intends to draw attention to the number of criminal offences that can now be committed without harm or risk of harm to putative 'victims'. Maureen C. Johnson argues in her essay that traditional inchoate offences have been expanded into what may be termed *super-inchoate* by reference by reference to the expanded distance between perpetrator and the intended harm via the internet. As the very idea of cyberspace challenges the perceptions of proximity which have been the ideology behind the traditional inchoate offence, Johnson asks whether the expansion of the criminal law in this way is ultimately a symptom of over control by the State driven by a culture of fear in the post-modern society, and whether we are ultimately any safer as a result.

In the final essay in the book, *Witches and the Law in the 21st Century*, Celia Rumann examines the practice of witchcraft and its intersection with the law in sub-Saharan Africa. These criminal prosecutions have disastrous results

for those convicted, but these are not the only costs associated with such prosecutions. This essay considers the implications of this practice under domestic and international law, the cultural costs of this practice and whether there are other ways of resolving the issue.

I hope that the readers will find this collection of essays interesting as well as stimulating. Many of the debates analysed and explained in this volume are on going, and the interpretation and suggestions offered will contribute to future course of the debates.